

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA**

ARTHUR GARRETT,)
Petitioner,)
v.) Case No. CIV-21-00918-JD
SCOTT CROW, Director of DOC,)
Respondent.)

ORDER

Before the Court is a Report and Recommendation [Doc. No. 9] issued by United States Magistrate Judge Shon T. Erwin on December 7, 2021, recommending that Petitioner Arthur Garrett’s (“Garrett”) Petition for Writ of Habeas Corpus under 28 U.S.C. § 2254 [Doc. No. 1] be dismissed without prejudice for failure to exhaust state court remedies. Judge Erwin advised Garrett that he may file an objection to the Report and Recommendation with the Clerk of Court by December 27, 2021, and that failure to timely object to the Report and Recommendation waives the right to appellate review of both factual and legal issues contained in the Report and Recommendation. [Doc. No. 9 at 7]. *See also Moore v. United States*, 950 F.2d 656, 659 (10th Cir. 1991).

The record reflects that Garrett did not timely file an objection to the Report and Recommendation or request an extension of time to do so. The Court therefore **ADOPTS** the Report and Recommendation [Doc. No. 9] for the reasons stated therein and **DISMISSES** Garrett’s petition without prejudice.

Under Rule 11(a) of the Rules Governing Section 2254 Cases in the United States District Courts, “[t]he district court must issue or deny a certificate of appealability when it enters a final order adverse to the applicant.” To obtain a certificate of appealability, the petitioner must make “a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). The petitioner can satisfy this standard by demonstrating that jurists of reason could debate whether the petition should have been resolved in a different manner or that the issues presented are adequate to deserve encouragement to proceed further. *Slack v. McDaniel*, 529 U.S. 473, 484 (2000); *see also Gonzalez v. Thaler*, 565 U.S. 134, 140–41 (2012).

After considering this Order, the Report and Recommendation, and the record, the Court finds that reasonable jurists could not debate the Court’s determination that Garrett’s habeas petition is subject to dismissal because he failed to exhaust available state court remedies. Because Garrett cannot make the required showing under the statute and Supreme Court precedent, the Court declines to issue a certificate of appealability.

IT IS SO ORDERED this 11th day of January 2022.



JODI W. DISHMAN
UNITED STATES DISTRICT JUDGE